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IN THE
Supreme Court of the United States
October Term, 1986

LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

v.

JACK THOMSEN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONSE TO THE PETITION FOR A WRIT OF CERTIORARI

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STATEMENT

This is a "hybrid action" by a member of the International Brotherhood of Teamsters against both his employer, United Parcel Service ("UPS"), alleging that he was fired in breach of contract, and his union, petitioner Teamsters Local 710, alleging that it colluded with management to uphold his discharge in violation of the duty of fair representation ("DFR"). In brief, respondent's claim is that his discharge was contrary to the "just cause" requirement of the contract, that the union's representation of his interests in the joint grievance committee was arbitrary, discriminatory, and in bad faith, and that the union's misconduct was motivated in part by the fact that

Thomsen is affiliated with Teamsters for a Democratic Union, a Teamsters rank-and-file dissident organization.

Proceeding *pro se*, Thomsen filed a complaint in the United States District Court for the Southern District of Iowa against both UPS and Local 710 on June 18, 1984, well within the six month period after the grievance procedure was completed on January 19, 1984. Thomsen completed the summons forms by hand and delivered one of them to the Scott County sheriff for service on UPS at its terminal in Davenport. Service was made on the company's "feeder manager" on July 12, 1984, which was also within the six-month period. UPS then moved to quash the summons on the grounds that the summons was defective on its face and that service could not be obtained by delivery to a feeder manager.

Respondent's efforts to obtain service of Local 710 encountered even greater obstacles. Local 710, which represents employees throughout Indiana, Illinois, and Iowa, has its office in Chicago. Thomsen first tried to have the complaint served by the sheriff of Cook County, Illinois, but service was refused, apparently because Thomsen had indicated the name of the wrong Local 710 official to accept service. Next, Thomsen mailed the complaint to the union's office in Chicago where, according to the affidavit of a Local 710 officer, it was received on August 1, 1984. Local 710 then moved to quash service or dismiss on the grounds that certain information was omitted from the summons and that mailing a summons is insufficient, under Rule 4(d)(3), F. R. Civ. P., to effect service on an unincorporated association.

At this point Thomsen obtained counsel, who obtained new summonses and caused them to be served on both defendants in the proper manner; accordingly, the district court denied the motions of each defendant to quash service as moot. UPS then filed its answer. Local 710, however, moved to dismiss the complaint or, in the alternative, for summary judgment, on the ground that it had not received the complaint until more than six months from the conclusion of the grievance procedure. The district court denied the motion, but certified the appeal for

interlocutory appeal under 28 U.S.C. § 1292(b). 608 F. Supp. 1244 (S.D. Iowa 1985). Defendants moved for leave to appeal after the expiration of the ten-day period allowed by section 1292(b), and the Court of Appeals denied leave to appeal without prejudice to recertification of the question. The district court promptly recertified the question and the court of appeals accepted the appeal. The decision of the district court was affirmed. 792 F.2d 115 (8th Cir. 1986).

ARGUMENT

IF THE COURT HAS JURISDICTION OF THE PETITION, IT SHOULD HOLD THIS CASE FOR DISPOSITION IN LIGHT OF *WEST V. CONRAIL*, NO. 85-1804, WHICH RAISES THE IDENTICAL ISSUE.

1. There is some question about whether the Court has jurisdiction of the petition for a writ of certiorari, based on questions about the jurisdiction of the Court of Appeals to hear the interlocutory appeal. Some courts take the position that, absent some substantial reconsideration of the merits of a certified question, an issue may not simply be recertified when the appellant fails to perfect a timely appeal. *E.g., Nakhleh v. Chemical Constr. Corp.*, 366 F. Supp. 1221 (S.D.N.Y. 1973), *and cases cited.* On the other hand, this Court may have indicated a contrary view by assuming jurisdiction without explicit discussion of the issue in *Baldwin County Welcome Center v. Brown*, 466 U.S. 147 (1984). We note that the dissenters did discuss the issue, and decided that jurisdiction existed. *Id.* at 160-162. If the Court concludes that jurisdiction is lacking, it should dismiss the petition.

2. If the Court concludes that it does have jurisdiction, then it should hold the petition for disposition in light of *West v. Conrail*, No. 85-1804, which raises an issue identical to the question presented here. Petitioner urges that certiorari be granted

because *West* arises under the Railway Labor Act, whereas respondent's claim is based on the Labor-Management Relations Act ("LMRA"). Petition at 9 n.1. However, *West* is being litigated on the assumption that the same rules apply to both kinds of fair representation cases, and so there is no reason to grant the petition here in order to be certain that the issue will be resolved as it applies to the LMRA as well as the RLA.

CONCLUSION

The petition should either be dismissed for lack of jurisdiction, or held for disposition in light of *West v. Conrail*, No. 85-1804.

Respectfully submitted,

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